

138961-1

**REMARKS**

Claims 1 – 6, 8 – 23, 25 – 29, 32 – 35 and 37 – 40, are pending in the present Application. Claims 35 and 37 have been amended, Claim 38 has been cancelled, and Claims 1 – 6, 8 – 23, and 25 – 29 have been allowed, leaving Claims 32 – 35 and 37, 39, and 40 for consideration. The Specification has been amended to correct a typographical error.

Claims 35 and 37 have been amended for clarity. Support for this amendment can at least be found in Claim 35 as originally filed as well as in Paragraphs [0105], [0106], and [0110].

Claim 38 was cancelled to remove redundancy.

No new matter has been introduced by this amendments. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

**Claim Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claim 35 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 35 has been amended for clarity. This amendment does not narrow Claim 35. Claim 35 included the element that the authenticatable article was an optical disk. This language has now merely been rearranged to be clear that the forming step forms an optical disk substrate from the authenticatable polymer. Reconsideration and withdrawal of this rejection are respectfully requested.

**Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 32 – 35 and 37 – 40 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Publication No. 2002/0149003 to Lucht et al. Applicants respectfully traverse this rejection.

Lucht et al. are relied upon to allegedly teach a

thermochromic polymer-based temperature indicator composition, which comprises polythiophene (0.05 to 5.0% by weight based on the weight of the composition) and a carrier medium. The thermochromic polymer-based can be incorporated via injection molding or extrusion into commercially plastics (substrate polymer)...

it is well known that the transparent polycarbonate is useful for an optical disk material having a recording layer... Therefore, it would have been obvious to

138961-1

those skilled in the art to utilize the thermochromic material of the reference and incorporate with substrate polymer... because it is know to use thermochromic materials to verify authenticity...

(Office Action dated November 01, 2005 (hereinafter OA 11/05), page 3) Applicants respectfully disagree.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Here it is suggested to modify the teaching of Lucht et al. to form an optical disk from the thermochromic composition claimed in the present application. However, Lucht et al. teach the use of the thermochromic composition

as a safety feature or a thermal sensor for stoves, baking utensils or pans, radiator caps, cooling racks, paper/plastic coffee cups and lids, baby bottles, cooking utensils, cooking ware, fire safety, food packaging, instrument sterilization, novelty items, food preparation and handling equipment, warning labels, packaging film, microwave dishes, frozen food packages, beverage bottles, cable or wire coverings, motor and engine parts, breaking systems, automobile or truck tires, bathtub coatings, and other substrates and/or articles where a visual indication of a temperature change is important.

(Paragraph [0022]) As is admitted in the OA 11/05, Lucht et al. fail to disclose an optical disk prepared by the authenticatable polymer. As is understood in the art, the playability of the optical disc can be affected by changes to the optical properties of the disk. It is not obvious to randomly change optical properties of an optical disk with an expectation of the changes not impacting the playability of the disk. Lucht et al. do not suggest that the thermochromic composition is useful in optical disks, but mention articles such as dishes, novelty items, coffee cups, utensils, and so forth. There is no teaching or

138961-1

suggestion from Lucht et al. that the thermochromic composition would be useful as an optical disk.

In determining obviousness, it is important to determine what an artisan would have been motivated to do with an expectation of success, and it is not relevant what an artisan could have done. There is no motivation or expectation of success to modify Lucht et al. as suggested in the OA 11/05. Reconsideration and withdrawal of this rejection are respectfully requested.

#### Allowed Claims

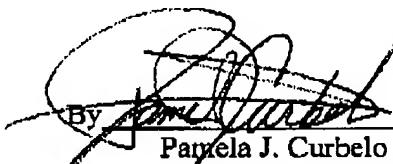
Claims 1 – 6, 8 – 23, and 25 – 29 have been allowed. Applicants thank the Examiner for the acknowledgement of the allowability of these claims.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejections and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 07-0893.

Respectfully submitted,

CANTOR COLBURN LLP

By   
Pamela J. Curbelo  
Registration No. 34,676

Date: December 14, 2005  
CANTOR COLBURN LLP  
55 Griffin Road South  
Bloomfield, CT 06002  
Telephone (860) 286-2929  
Facsimile (860) 286-0115  
Customer No.: 43248